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(2) (1)

AMENDED WRIT PETITION

THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 5912 OF 2005

PETITIONER

Nagendra Pratap Singh, aged about 23 years, S/o Shri Tahsildar Singh, R/o-Post Tyodhary, P.S. Amarpatan, District Satana (M.P.)

V E R S U S

RESPONDENTS

1. The Union of India, through the Secretary-Ministry of Railway, New Delhi, 110001

2. The Divisional Security Commissioner, Railway Protection force, South Eastern Central Railway, Bilaspur (C.G)

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16/6/06
CHAUDHARY
COUNSEL RAILWAYS
HIGH COURT OF CHHATTISGARH

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

AFR

(110)

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No. 5912 of 2005

Petitioner : Nagendra Pratap Singh

- Versus-

Respondents : Union of India and another

Post for order on 4th January, 2007

Sd/-
Satish K. Agnihotri
Judge

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IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No. 5912 of 2005

Petitioner : Nagendra Pratap Singh

- Versus-

Respondents : Union of India and another

Mr. Rajesh Pandey, Advocate for the petitioner.

None appears for the respondent No. 1.

Miss Yoshita Masih, Advocate for the respondent No. 2.

ORDER

(Passed on 4th Day of January, 2007)

This order of the Court is passed by **Justice Satish K. Agnihotri**.

1. The present writ petition filed under Article 226/227 of the Constitution of India seeks a writ/direction to the respondent No. 2 to appoint the petitioner on the post of constable and to send him for training under the rules.

2. The indisputable facts in nutshell are that the petitioner was selected for appointment on the post of constable in the Railway Protection Force as a General Category candidate, held in April, 2005. On selection, the petitioner was required to fill-up duly attestation form (Annexure P/2). Column No. 12 of the said attestation form was filled by the respondent No. 2, as under:-

"12. (i) (a) Have you ever been arrested ? Yes/No-No

(b) Have you ever been prosecute ? Yes/No-No

(c) Have you ever been kept under detention ? Yes/No-No

(d) Have you ever been bound down ? Yes/No-No

(e) Have you ever been fined by a Court of law ? Yes/No-No

(g) Have you ever been debarred from any

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examination or rusticated by any University or any other education authority/Institution ? Yes/No-No

(h) Have you ever been debarred/disqualified by any Railway or Public Service Commission from appearing at its examination/ selection ? Yes/No-No

(i) Is any case pending against you in any court of law at the time of filling up this Attestation form ? Yes/No-No

(j) Is any case pending against you in any University or any other educational authority/Institution at the time of filling up this Attestation Form ? Yes/No-No

If the answer to any of the abovementioned question is 'Yes' give full particulars of the case/arrest/detention/ fine/conviction/sentence/punishment etc. and or the nature of the case pending in the Court/University/ Educational Authority etc. at the time of filling up this form."

The petitioner thereafter submitted a letter as supplementary form on 25.8.2005 (Annexure P/7) making corrections in Column 12 (i) (a) of the Attestation form to the effect that the petitioner was arrested and he was prosecuted in two criminal cases. In one case prosecution was for offences under Sections 395, 397, 436, 120-B and 427 of the Indian Penal Code. In the second case, the petitioner was prosecuted for offences punishable under Sections 147, 145, 149, 302, 294, 436, 120-B and 427 of the Indian Penal Code. The petitioner was acquitted in both the said criminal cases by the judgments and orders dated 25.8.2003 (Annexure P/5) and 29.8.2003 (Annexure P/6).

3. The petitioner was issued a show-cause notice dated 2.11.2005 (Annexure P/3) asto why the appointment of the petitioner be not cancelled on account of the fact that the petitioner had

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deliberately filled up column No. 12 of the attestation form wrongly by stating that he was never arrested nor prosecuted. The petitioner was prosecuted which resulted into acquittal. The petitioner submitted his reply on 3.11.2005 (Annexure P/4) stating that the petitioner did not know English and he had not given the information with any ulterior motive. The petitioner thought that he has been acquitted from all the charges and information was given accordingly. However, the correct information was sent immediately on 25.8.2005.

4. Mr. Rakesh Pandey, learned counsel appearing for the petitioner would submit that this is not a case of *suprresio veri and suggetio falsi* as the petitioner had realized his mistake and submitted the application immediately, correcting the mistake/error on 25.8.2005. It was further contended that the petitioner had not attempted to seek employment on the post on making false statement. Much before the date of selection, the petitioner was acquitted from all criminal charges by the judgments and orders dated 25.8.2003 (Annexure P/5) and 29.8.2003 (Annexure P/6). Learned counsel for the petitioner lastly submitted that in the facts and circumstances of the case the petitioner be granted relief of appointment on the post of constable as the petitioner has been found suitable on merit.

5. Despite service of notice, none appears for the respondent No. 1.

6. Miss Yoshita Masih, learned counsel appearing for the respondent No. 2, per contra, would submit that the petitioner was not sent for training on the ground that the petitioner had concealed certain facts with regard to his arrest and

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prosecution earlier. It was clearly stated in the attestation form that stating false information in the attestation form would entitle disqualification for employment. The petitioner was arrested and prosecuted for criminal charges which resulted into acquittal, but the fact remains that the petitioner was arrested and prosecuted in the past, which the petitioner concealed deliberately. The modification/amendment made subsequently would not change the nature and the petitioner stands disqualified for appointment on the post of constable, which is the sensitive and disciplined post.

7. I have heard learned counsel for the parties, perused the pleadings and documents appended thereto. It is evident that the petitioner had made false statement in the attestation form submitted on 17.8.2005. The said mistake was attempted to be corrected by the letter dated 25.8.2005 (Annexure P/7) stating that the petitioner ignorantly did not state the fact of his arrest and prosecution earlier. The petitioner was acquitted from all criminal charges much before April, 2005 by the judgments and orders dated 25.8.2003 (Annexure P/5) and 29.8.2003 Annexure P/6).

8. The Supreme Court in the case of **Commissioner of Police, Delhi and another Vs. Dhaval Singh**[1], while considering the identical facts, wherein the petitioner did not inform about pendency of criminal case in the attestation form in August 1995, but on 15-11-1995, he voluntarily informed the authority concerned about pendency of criminal case, it was held that the information was conveyed voluntarily which was acquitted before passing the order of cancellation of candidature. The

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cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material.

9. In the case of **Kendriya Vidyalaya Sangathan and others Vs. Ram Ratan Yadav**[2], the Supreme Court held that the object of requiring information in the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents of the respondent as on the date of filling and attestation of the form to judge his suitability to continue in service. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service. This was a case where the candidate has not informed the authority voluntarily removing the error committed by the candidate in the attestation form.

10. The Supreme Court in the case of **B.R. Chowdhury Vs. Indian Oil Corpn. Ltd. and others**[3] relying on the decision of the Supreme Court in the case of Commissioner of Police, Delhi and another Vs. Dhaval Singh (Supra) held that the candidate is bound by his own affidavit and the mentioned memorandum of agreement. This was also not a case where the candidate voluntarily informed the authorities curing the error committed in the attestation form.

11. In the case of **Secy., Deptt. of Home Secy., A. P. and others Vs. B. Chinnam Naidu**[4], the facts of the case are different and are not applicable to the facts of the present case. In that case, the candidate had not informed to the authorities voluntarily about the correct factual position immediately.

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12. The facts of the cases in Kendriya Vidyalaya Sangathan and others Vs. Ram Ratan Yadav and Secy., Deptt. of Home Secy., A. P. and others Vs. B. Chinnam Naidu (Supra) are different. The facts of the present case are identical to that of Commissioner of Police, Delhi and another Vs. Dhaval Singh (Supra).

13. After filling the attestation form on 17.8.2005, the petitioner has voluntarily modified the information, as stated in column No. 12, in his letter dated 25.8.2005. The voluntarily submission of supplementary letter dated 25.8.2005 to the attestation form dated 17.8.2005, it appears was not considered by the authorities before issuing the show-cause notice dated 2.11.2005. The conduct of the petitioner by submitting the letter immediately within a period of 7 days to the authorities making necessary amendments in column No. 12 is not a case of *suprresio veri and suggetio falsi* and as such the same would not amount to doubtful integrity and character, as is the purpose of the attestation form.

14. For the reasons-stated hereinabove, the writ petition is allowed and the respondent No. 2 is directed to consider the case of the petitioner for appointment on the post of constable, pursuant to his selection, held in April, 2005. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. {(1999) 1 SCC 246}
2. {(2003) 3 SCC 437}
3. {(2004) 2 SCC 177}
4. {(2005) 2 SCC 746}